

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	MDL No. 2545 Master Docket Case No. 1:14-cv-01748 Hon. Judge Matthew F. Kennelly
This document relates to: MEDICAL MUTUAL OF OHIO, Plaintiff, v. ABBVIE INC., ABBOTT LABORATORIES, ABBOTT PRODUCTS, INC., SOLVAY AMERICA, INC., SOLVAY NORTH AMERICA, LLC, SOLVAY PHARMACEUTICALS, INC., SOLVAY PHARMACEUTICALS SARL, SOLVAY, S.A., AUXILIUM, INC., ELI LILLY AND COMPANY, LILLY USA, INC., ACRUX LIMITED, ACTAVIS PLC, ACTAVIS, INC., ACTAVIS PHARMA, INC., WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC., ANDA, INC., and ENDO PHARMACEUTICALS, INC., Defendants.	No. 1:14-cv-08857

DEFENDANTS' MOTION TO DISMISS
PLAINTIFF MEDICAL MUTUAL OF OHIO'S COMPLAINT

The undersigned Defendants respectfully move to dismiss the complaint filed by Plaintiff Medical Mutual of Ohio (“MMO”) under Federal Rules of Civil Procedure 12(b)(1), (2), and (6). In support of this Motion, Defendants state as follows:

1. On January 13, 2015, the Court directed that the undersigned Defendants file their motion to dismiss MMO’s Complaint and supporting memoranda by March 16, 2015, that MMO file its response to the motion by May 1, 2015, and that Defendants file their reply memoranda by June 8, 2015. *See* Doc. 591 (minute entry establishing briefing schedule); *see also* Doc. 660 (minute entry respecting page limits for Defendants joint and supplemental memoranda in support of their motion to dismiss).

2. The Court should dismiss MMO’s Complaint under Rule 12(b)(1), (2) and (6). MMO lacks standing to sue Defendants under the RICO Act and Article III because MMO (1) cannot establish proximate causation, (2) fails to plead “but-for” causation, and fails to plead a cognizable injury. Furthermore, MMO fails to plead that each Defendant committed multiple predicate acts of mail or wire fraud with the particularity required by Rule 9(b). MMO’s RICO claims against the AbbVie Defendants, Auxilium, and the Actavis Defendants are barred by RICO’s four-year statute of limitations and MMO’s RICO claims against the Lilly Defendants and Endo fail as well. MMO’s remaining claims under various state statutes and common law doctrines also must be dismissed for multiple reasons. The grounds for dismissal are set forth fully in Defendants’ Joint Memorandum in Support of Their Motion to Dismiss and Defendants’ respective Supplemental Memoranda, which are being filed contemporaneously with this motion.

For these reasons and the reasons set forth in Defendants’ Joint Memorandum and Supplemental Memoranda, the Court should dismiss MMO’s Complaint with prejudice.

Dated: March 16, 2015

Respectfully submitted,

/s/ David E. Stanley

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all registered attorneys of record.

/s/ David E. Stanley

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